

Appl. No. 09/881,473
Atty. Docket No. 6798MD
Amd. dated March 24, 2004
Reply to Office Action of September 25, 2003

REMARKS

Claims 1, 3-16, 18-25, 27-30, 32-37 and 39-83 are now in the case.

Applicants have added claims 63-83 to claim features directed to the Average Height Differential of the cleaning sheet.

Applicants have cancelled claims 2 and 3 without prejudice.

Applicants have amended independent claims 1, 23 and 27 to include the feature of macroscopically three-dimensional cleaning sheet having an Average Height Differential of at least about 1 mm.

Applicants have amended claims 4 and 22 to correct their dependency.

Applicants have amended dependent claims 12 and 14 to include the unit of the claimed Average Height Differential.

Applicants have amended claims 1, 19-21, 23, 27, 37, 58 and 60-61 to correct grammatical errors.

Each of these amendments is supported by the specification, claims and drawings as filed.

Double Patenting

Claims 1-62 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending application No. 09/410,592.

Claims 1-62 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-12, 14, 16-49, 52-67 and 69-109 of copending application No. 09/082,349.

Claims 1-62 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 and 31-50 of copending application No. 09/833,869.

Applicants hereby submit a terminal disclaimer therefore mooting the obviousness-type double patenting rejection.

Reconsideration and withdrawal of the rejections are therefore requested.

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Rejection under 35 U.S.C. § 102/103

Claims 1-17, 23-27, 35, 36, 44-48 and 50-54 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Shizuno '397 or in the alternative under 35 U.S.C. § 103(a) as being obvious over '397.

Applicants respectfully traverse the rejection in view of the following remarks.

The office action asserted that "Applicants have not stated the degree or amount of macroscopic texturization."

Applicants respectfully disagree.

Applicants submit that the claimed macroscopically three-dimensional cleaning sheets of independent claims 1, 23, 27 and 37 all include the features of a cleaning sheet having a macroscopic dimensional texture being defined by peaks and valleys such that the textured outward surface of the sheet has an Average Peak to Peak Distance, a Surface Topography Index and an Average Height Differential with defined ranges.

Applicants submit that at page 3, lines 15-21 of the specification, it is disclosed that "[m]acroscopic three-dimensionality is described herein in terms of "average height differential", which is defined herein as the average distance between adjacent peaks and valleys of a given surface of a sheet, as well as the "average peak-to-peak" distance, which is the average distance between adjacent peaks of a given surface. Macroscopic three-dimensionality is also described in terms of the "Surface Topography Index" of the outward surface(s) of the cleaning sheet; Surface Topography Index is the ratio obtained by dividing the Average Height Differential of a surface by the Average Peak to Peak Distance of that surface." A more detailed description is found at page 13, lines 27-35.

Applicants would like to bring to the Examiner's attention Example 1, Example 2 and Comparative Example A described at page 18 and 19 of the specification.

Applicants submit that Examples 1 and 2 are two examples of macroscopically three-dimensional cleaning sheets made according to the invention and that "Comparative Example A illustrates a nonwoven sheet having a uniform basis weight that is essentially planar. The sheet is commercially available from Kao Corporation, Tokyo, Japan, as QUICKLE®." (see page 19, lines 19-21)

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Applicants also submit that Table I includes the Average Peak to Peak Distance, Average Height Differential and Surface Topography Index of Examples 1 and 2, as well as, Comparative Example A.

Applicants note that the Average Peak to Peak Distance, Average Height Differential and Surface Topography Index of Comparative Example A do not fall within the claimed ranges.

Consequently, it is Applicants' position that the degree or amount of macroscopic texturization is in fact stated in the claimed macroscopically three-dimensional cleaning sheets which is defined by the Average Peak to Peak Distance, Average Height Differential and Surface Topography Index.

In addition, it is Applicant's position that a hydroentangled cleaning sheet does not have inherently a macroscopically three-dimensional texture (See Comparative Example A).

Moreover, Applicants respectfully remind the Examiner that independent claims 1, 23, 27 and 37 include the features of a macroscopically three-dimensional cleaning sheet having a first outward surface and a second outward surface, wherein at least one of the outward surfaces has a macroscopic three dimensional texture, said macroscopic three-dimensional texture being defined by peaks and valleys and which further includes the features of specific Average Peak to Peak Distances, Surface Topography Indexes and Average Height Differentials and comprising an additive.

Applicants note that Shizuno et al. do not teach or suggest a cleaning sheet having the specific Average Peak to Peak Distances, Surface Topography Indexes and Average Height Differentials presently claimed.

Consequently, it is Applicants' position that the Shizuno reference does not anticipate claims 1-17, 23-27, 35, 36, 44-48 and 50-54.

In addition, the office action dated 1/28/03 stated that "it should be noted that the Examiner is equating Figures 1 and 2 of Shizuno et al. to the peaks and valleys of the present invention. As a result, Shizuno et al. do disclose a macroscopically three-dimensional textured cleaning sheet."

Applicants note that it is well settled patent law that "patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." (Emphasis supplied) *Hockerson-*

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Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956 (C.A.F.C. 2000) and “[o]rdinarily, drawings which accompany an application for a patent are **merely illustrative of the principles embodied in the alleged invention claimed therein and do not define the precise proportions of elements** relied upon to endow the claims with patentability. **Patent Office drawings are not normally drawn to scale.**” (Emphasis supplied) *In re Olson*, 212 F.2d 590 (C.C.P.A. 1954)

In addition, “[a]bsent any written description in the specification of quantitative values, **arguments based on measurements of a drawing are of little value.**” (Emphasis supplied) *In re Wright*, 569 F.2d 1124 (C.C.P.A. 1977)

It is therefore Applicants’ position that the rejection improperly inferred that in view of Figs. 1 and 2 of the ‘397 patent, Shizuno et al. disclose a macroscopically three-dimensional cleaning sheet.

It is also Applicants’ position that the rejection improperly inferred that in view of Figs. 1 and 2 of the ‘397 patent, Shizuno et al. disclose a macroscopically three-dimensional cleaning sheet having the claimed Average Peak to Peak Distances and/or Surface Topography Indexes and/or Average Height Differentials.

Moreover, the office action asserted that “it is reasonable to presume that these properties” (i.e. Average Peak to Peak Distances and/or Surface Topography Indexes and/or Average Height Differentials) are inherent to Shizuno’s article. Support of said presumption is found in the use of like materials, i.e. hydroentangled cleaning sheets made of polyester or polyolefin fibers.”

Applicants have already demonstrated that hydroentangled cleaning sheets do not inherently have the claimed Average Peak to Peak Distance, Surface Topography Index and Average Height Differential.

Applicants remind the Examiner that “[I]nherency may not be established by probabilities or possibilities. **The mere fact that a certain thing may result from a given set of circumstances is not sufficient.**” (Emphasis supplied) *In re Oelrich and Divigard*, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). It is also well settled that “what may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.” *In re Naylor*, 369 F.2d 765, 768 (CCPA 1967); and *In re Newell*, 891 F.2d 899 (Fed. Cir. 1989), where it was argued that “a retrospective view of inherency is not a substitute for some teaching or

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suggestion which supports the selection and use of the various elements in the particular claimed combination.”

Consequently, it is Applicants’ position that the office action erroneously presumed that the claimed macroscopically three-dimensional cleaning sheet is inherently taught or suggested by Shizuno et al.

In addition, it is basic patent law that “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some **suggestion or motivation** ... to modify the reference or to combine the reference teachings. Second, **there must be a reasonable expectation of success**. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure.” (Emphasis added) *In re Vaeck*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991).

As best understood by Applicants, Shizuno et al. were faced with the problem of providing “a cleaning sheet, which is capable of satisfying both of the requirements with respect to the strength necessary for a cleaning operation and the degree of freedom of the constituent fibers necessary for dust collecting performance.” (See Col 1, lines 54-53)

Consequently, it is Applicants’ position that at the time of the invention, one of ordinary skill in the art being in possession of the ‘397 reference would have had no motivation to modify the Shizuno et al. cleaning sheet to provide the macroscopic three-dimensional cleaning sheet presently claimed.

Assuming *arguendo* that a modification of the Shizuno et al cleaning sheet would result in the macroscopic three-dimensional cleaning sheet presently claimed, Applicants submit that Shizuno et al. do not address the problem of providing a macroscopic three-dimensional cleaning sheet. As a result, Applicants submit that one of ordinary skill in the art would have had no reasonable expectation of success to provide the claimed cleaning sheet

Consequently, it is Applicants’ position that the office action has failed to establish a *prima facie* case of obviousness when it relied on the Shizuno reference.

Applicants also submit that a declaration of Saeed Fereshtekhou, Section Head at The Procter & Gamble Company, is filed concurrently herewith. Mr. Fereshtekhou has been employed by The Procter & Gamble Company for the past 16 years.

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Mr. Fereshtehkhoh states: "under [his] direction or control, experiments were conducted to measure the "Average Peak to Peak Distance", "Average Height Differential" and "Surface Topography Index" of cleaning sheets sold by the Kao Corporation under the QUICKLE® trademark (translation from Japanese) and having product serial No. S211297, which is printed on the package and by the S.C. Johnson Company under the PLEDGE GRAB-IT® trademark and having product serial No. E510802, which is printed on the package."

Mr. Fereshtehkhoh states: "For these experiments, at least 5 cleaning sheets sold by the Kao Corporation and 5 cleaning sheets sold by the S.C. Johnson Company were inspected to determine if any of these sheets include a macroscopic three-dimensional texture as instructed in the above identified patent application."

Mr. Fereshtehkhoh states: "For the cleaning sheet having a macroscopic three-dimensional texture, 10 measurements of the "Average Peak to Peak Distance" and the "Average Height Differential" were taken in random locations on the cleaning sheets."

Mr. Fereshtehkhoh states: "that based on the foregoing, it is my observation that the "Average Height Differential" of all the cleaning sheets inspected is less than 1 millimeter."

Based on the foregoing, reconsideration and withdrawal of the rejections are therefore respectfully requested.

For the sake of brevity, Applicants submit that the same arguments presented regarding the Shizuno reference also apply to the 35 U.S.C. 103(a) rejections of the claims as obvious over Shizuno et al. in view of Henry '061, Trasher '436, Gilmore et al. '858, Mackey '112 and/or Zelazoski '555.

Reconsideration and withdrawal of the rejections are therefore respectfully requested.

It is submitted that all the claims are in condition for allowance. Early and favorable action on all claims is therefore requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

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Respectfully submitted,
FERESHTTEHKHOU et al.

By 

Thibault Fayette
Attorney for Applicants
(513) 627-4593

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Customer No. 27752